Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

ADCO OIL COMPANY,

Petitioner,

v.

MICHAEL J. ROVELL,

Respondent.

On Petition for Writ of Certiorari from the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Respondent attorney represented petitioner as an individual partner of a partnership to investigate petitioner's potential malpractice claims against its former lawyer. Petitioner subsequently assigned "control" of those potential claims to its partnership, but it remained entitled to receive 20% of any returns from potential litigation exceeding partnership capital. Respondent undertook to represent both petitioner and its partnership simultaneously by filing litigation after petitioner's assignment. After filing suit, Respondent requested that petitioner sign an additional attorney-client engagement agreement with his firm which confirmed their representation of petitioner in the litigation as filed, and petitioner did sign it.

During the trial, but without petitioner's consent, the partnership authorized respondent to execute a contingent settlement which depended upon the jury verdict. The settlement guaranteed the partnership receive a minimum "low" $200,000 in bargain for limiting the maximum recovery "high" to $850,000. Respondent knew the guaranteed "maximum" was mathematically insufficient to entitle petitioner to recover upon its 20% of returns after investment interest in the litigation. Coincidentally, the "high-low" settlement happened also to guarantee respondent a minimum 30% contingent fee of the $200,000 minimum recovery, or $60,000. As a result of the jury verdict, the partnership received $515,000, respondent received $265,000, and petitioner received nothing.

When petitioner sued respondent in federal jurisdiction, the United States Court of Appeals for the Seventh Circuit denied petitioner recovery, not on the merits, but on the grounds that petitioner could not have suffered any injury since petitioner had assigned its litigation claims to its partnership. The court reasoned petitioner's injury had

only been derivative through its partnership, not direct, and since petitioner had not elected to sue derivatively, its suit was denied.

Petitioner respectfully requests that certiorari be granted on the following questions:

1. Did petitioner suffer direct personal injury to its legally protected interest (its contractual partnership right to receive 20% of returns in excess of investment from the litigation), even though it had assigned control of the underlying litigation to its partnership, and if so, was petitioner therefore entitled to bring its conflict of interest malpractice claim against respondent as a direct action in its own name, based upon their initial attorney-client engagement agreement executed *before* the assignment and the additional one executed *after* the assignment that confirmed respondent's duty to petitioner in the litigation?

2. Did petitioner suffer direct personal injury when, after the subject matter of representation between petitioner and respondent was complete, its respondent gave third parties an alleged false affidavit which they successfully used to defeat petitioner's separate lawsuit against them, and if so, was petitioner therefore entitled to bring its action for breach of the duty of trust claim against respondent as a direct action in its own name?

3. Does the instant case decision conflict with the United States Court of Appeals, Fifth Circuit, case of *In Re Yarn Processing Patent Validity Litigation, et al, v. Leesona Corporation*, 530 F.2d 83 (5th Cir. 1976), rehearing denied, 536 F.2d 1025 (1976) which holds that in an attorney-client conflict case, an assignee of the underlying subject matter of litigation (intellectual property) can not enforce

against the assignor's attorney the attorney-client obligations the attorney owed the assignor, because the assignment of the underlying subject matter of representation does not assign the rights and duties of the client's attorney, the relationship between an attorney and his client is personal, and in the absence of this relationship, the duties of loyalty do not arise.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The caption contains the names of all parties to the proceedings in the court of appeals.

ADCO Oil Company, the appellant in this matter, submits the following statement of its corporate interests and affiliations for the use of the judges of this Court:

1. The full name of every party or amicus the attorney represents in the case is ADCO Oil Company.
2. ADCO Oil Company is not a publicly-held corporation or other publicly-held entity.
3. ADCO Oil Company does not have any parent corporation.
4. No publicly-held companies own 10 percent or more of ADCO Oil Company's stock.
5. No other publicly-held corporation or other publicly-held entity has any direct, financial interest in the outcome of this litigation.
6. The names of all law firms whose partners or associates have appeared for the party in the case or are expected to appear for the party in this court are these:

   Ward & Glass, L.L.P, Law Offices of Mark J. Rose, and Winningham & Stein.

Date: ___ __, ____

Attorney's Signature: _____
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PETITION FOR WRIT OF CERTIORARI

ADCO Oil Company, the Petitioner, respectfully prays that a writ of certiorari issue to review the opinion and order of the United States Court of Appeals for the Seventh Circuit entered in this case on February 3, 2004, and February 26, 2004 respectively.

OPINIONS AND ORDERS BELOW

The opinion of the Seventh Circuit Court of Appeals which is sought hereby to be reviewed is reported at 357 F.3d 664 (7th Cir. 2004) The February 26, 2004, order of the Seventh Circuit denying the petition for panel rehearing is unreported.

That opinion, based upon an appeal from the United States District Court for the Northern District of Illinois, Eastern Division, is reported at 2003 U.S. Dist. LEXIS 8352 (N.D. Ill. May 15, 2003).

That opinion was based upon an appeal from The United States Bankruptcy Court, Northern District of Illinois, Eastern Division, denying petitioner's motion for partial summary judgment and granting respondent's cross-motion for summary judgment, case No. 95 B 21171, *In Re Michael J. Rovell*, debtor.

BASIS FOR JURISDICTION IN THIS COURT

Federal bankruptcy law is the original source of subject-matter jurisdiction. See 28 U.S.C. § 1334(b). The United States Bankruptcy Court, Northern District of Illinois, Eastern Division, issued a Rule 58 final judgment. That judgment appealed from was "final" within

the meaning of 28 U.S.C. § 1291 because it disposed of all claims of all parties to this action.

On appeal, the United States District Court for the Northern District of Illinois, Eastern Division, had jurisdiction pursuant to 28 U.S.C. § 158(a)(1). On appeal, the Seventh Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

The judgment of the United States Court of Appeals for the Seventh Circuit, the decision to be reviewed, was entered on February 3, 2004. A timely petition for panel rehearing was denied on February 26, 2004.

The jurisdiction of the Supreme Court to review on a writ of certiorari the judgment in question is invoked under 28 U.S.C. § 1254(1) and Supreme Court Rule 10(a), in that the Seventh Circuit Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter.

STATUTORY PROVISIONS INVOLVED

There are no statutory provisions involved.

STATEMENT OF THE CASE
Factual Background

Petitioner ADCO Oil Company ("ADCO") developed intellectual property with the aid of its former attorney, Guy Taylor, et al. ADCO assigned that intellectual property to an Oklahoma general partnership named Hugoton Joint Venture-1986 (HJV) in exchange for project financing and the right to receive 20% of returns exceeding partnership investment, "payout." This

intellectual property constituted the entire purpose and scope of the HJV's business. The HJV was controlled by another partner. ADCO discovered its former attorney, Taylor, had destroyed the value of the intellectual property by improperly disclosing this confidential information to others.

ADCO retained respondent Michael J. Rovell ("Rovell") to investigate ADCO's potential litigation claims against Taylor. It is important to note only ADCO had ever had an attorney-client relationship with Taylor and his firm, so only ADCO owned a potential conflict of interest malpractice claim against target defendants. A few weeks later ADCO formally assigned control of its potential litigation claims against Taylor to HJV upon the same partnership terms—ADCO was entitled to receive 20% of returns from the litigation exceeding partnership investment of $1.1 million.

Later, Rovell filed the underlying litigation in Oklahoma state court on behalf of both ADCO and HJV, as co-plaintiffs against Taylor and Mobil Oil Company. Mobil settled for $250,000 before trial and was dismissed from the suit. During trial, Rovell allegedly injured ADCO by executing a contingent $850,000-$200,000 "high-low" settlement with the remaining Taylor defendants. The amount guaranteed to be paid to plaintiffs depended on whether the jury verdict was above, between, or below those amounts. Rovell knew this settlement would mathematically eliminate all possibility that ADCO could recover from the litigation, because according to the terms of the settlement, the maximum "high" recovery would be insufficient to exceed HJV's investment of $1.1 million. Thus there could never be any profits for ADCO to share from the litigation no matter what the jury verdict might be. The jury re-

turned its verdict in favor of ADCO for $100 million in actual damages and $20 million in punitive damages. According to the high-low settlement agreement, defendants paid the maximum $850,000 to plaintiffs. Rovell deducted his $265,000 contingency fee and costs and sent the balance of $585,000 to HJV. When HJV distributed the recovery from litigation to its partner investors, ADCO received nothing from the settlement because the total litigation proceeds from both Mobil and Taylor had failed to exceed investor "payout."

After the Taylor case was over, ADCO sued HJV and its controlling partner individually, in Oklahoma state court for breaches of fiduciary duty. ADCO's theory was that a fiduciary can not trade away his beneficiary's property in exchange for a personal benefit to himself at his beneficiary's expense: i.e., the controlling partner of HJV, as ADCO's fiduciary, could not properly authorize any settlement on terms which guaranteed the controlling partner at least a minimum litigation recovery if the terms of the settlement simultaneously guaranteed his beneficiary partner ADCO would receive nothing at all from the litigation settlement.

Of course this same legal theory also applied between Rovell and ADCO, because Rovell had a 30% contingency fee contract with HJV. Thus when Rovell executed the "high-low" settlement in the middle of the trial after he unsuccessfully sought ADCO's consent to same, he coincidentally had guaranteed himself, also as ADCO's fiduciary, a 30% contingent fee from the $200,000 minimum low settlement amount, $60,000.

Further, as a separate cause of action in the instant suit, ADCO contends Rovell breached his continuing duty of loyalty to ADCO *outside the time frame of the Taylor litigation*. After the Taylor litigation had been

completed, ADCO had filed suit against both HJV and its individual controlling partner for breaches of fiduciary duty in the Oklahoma state courts. ADCO lost this case by defendants' summary judgment which was affirmed on appeal. The Oklahoma appellate court affirmed specifically on the basis of the controlling partner's defense—that he had relied upon Rovell's legal advice to settle the Taylor suit, and ADCO had not rebutted the presumption that a partner acts in good faith if it acts upon the advice of a competent attorney. Rovell had given his personal affidavit to the defendants for their use as evidence to support their summary judgment motions in defense to ADCO's claims. Rovell was not an attorney of record for either party in that suit.

ADCO contends Rovell's affidavit was patently false.[1] ADCO cited common law authority for the proposition, "A breach of trust which arises out of the relationship, but occurs outside the time frame of the representation of plaintiff, could be a breach of fiduciary duty." The affidavit was allegedly false because it stated Stone had used absolute good faith in an attempt to maximize return for all Venturers, "including ADCO." Just the reverse is true. HJV had taken Rovell's suggestion and "capped" the maximum possible litigation recovery. Logically, HJV can not at the same time attempt to "maximize" the settlement by acting to *limit* the possible "high." This affirmation is a logical incongruity, and it is

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[1] "To my knowledge, Stone, on behalf of Hugoton Venture, Inc. as majority in interest of HJV, always followed my advice as legal counsel in these matters, acted consistent with his legal authority to do so, and always used absolute good faith in an attempt to maximize return for all Ventures, including ADCO."

false. Nevertheless, it was persuasive to the Oklahoma appellate court.

Neither the bankruptcy court, nor the district court, nor the Seventh Circuit Court of Appeals have ever mentioned, much less addressed, this false affidavit allegation of ADCO's.

IN THIS REVIEW OF A JUDGMENT OF A UNITED STATES COURT OF APPEALS, THE BASIS FOR FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE

As required by Rule 14(g)(ii), petitioner identifies federal bankruptcy law as the source of subject matter jurisdiction: 28 U.S.C. § 1334(b), because petitioner's original malpractice action against respondent has proceeded as an adversary action within bankruptcy after respondent filed a federal bankruptcy proceeding.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

A. The Court of Appeal's Decision Conflicts with a Decision from Another Circuit

These proceedings present a question of exceptional importance involving an issue on which the panel decision conflicts with an authoritative decision of another Circuit that has addressed the issue. The instant Seventh Circuit Court decision constitutes a fundamental attack on the principles stated in the Court of Appeals for the Fifth Circuit case of *In Re Yarn Processing Patent Validity Litigation, et al. v. Leesona Corporation*, 530 F.2d 83 (5th Cir. 1976), rehearing denied, 536 F.2d 1025 (1976).

In re Yarn involved a conflict of interest case wherein defendant did not have standing to raise the question of disqualification of a plaintiff's attorney who had been a former attorney of a co-defendant, which had been dismissed from suit, on claimed interest of its own arising out of asserted joint venture with dismissed defendant and assignment of a patent, since assignment of patent did not assign attorney along with it and defendant did not thereby receive assignment of any rights against the attorney. Applying the reasoning of that proposition to the instant case, the elements of standing required to have standing to disqualify an attorney should be the same elements of standing required in order for petitioner to be allowed to bring a malpractice action against its respondent directly in its own name, instead of derivatively through an assignee.

The instant court did not address the merits of ADCO's allegations. Instead it found ADCO is not entitled to recover against Rovell because since ADCO had transferred to HJV "whatever" interest it had in both the intellectual property and the ensuing claim against defendants, ADCO's injury was thus derivative rather than direct—HJV did not recover enough to call for a payout to ADCO, yet ADCO had elected to sue in its own name rather than make a derivative claim on behalf of HJV.

The Seventh Circuit's opinion incorrectly denied ADCO's recovery against Rovell for the following reasons:

The instant decision contradicts the proposition outlined in *In Re Yarn*, because if ADCO's assignment of control of its litigation (intellectual property) to HJV did not assign Rovell's existing duty owed to ADCO to avoid conflicting representation, then HJV would not be

allowed to bring an action against Rovell in its own name for breach of the duty Rovell owed ADCO. A decision consistent with *In Re Yarn* would hold Rovell's existing obligations owed ADCO can not be later asserted by HJV as a result of the assignment, because duties do not follow the assignment.

1. ADCO suffered direct, non-derivative, injury to its 20% of profits economic interest it retained after it had assigned its litigation claims to HJV partnership, because when Rovell executed the "high-low" settlement for HJV, that ended the entire litigation and at the same time extinguished all of ADCO's opportunity to recover from the litigation.

Before ADCO had assigned control of its claims to HJV, Rovell had a duty of loyalty to protect any interest ADCO may have had in the litigation because he had been retained to investigate precisely what ADCO's rights and claims were against Taylor defendants: "A client has the right to expect the loyalty of his attorney in the matter for which he is retained." The loyalty owed is the duty to avoid any conduct that would conflict with or be adverse to the client's interest. ADCO's legally protected interest was the 20% of returns in excess of investment retained interest it continued to own after its assignment of control of the litigation to HJV.

The Seventh Circuit decision acknowledged ADCO's right to receive this 20% share, if any, of litigation proceeds. Yet the court stated, "It is unclear to us that ADCO had any interest in the suit against Mobil and Taylor to start with. Once ADCO had sold its intellectual property rights to HJV in exchange for a partner-

ship interest, any injury caused by Taylor's errors was suffered by HJV rather than ADCO." (Seventh Circuit Opinion, p. 3) Here the court must be in error, because if ADCO continued to own *any* interest in the intellectual property following its assignment, that percentage interest would be the measure of ADCO's damages resulting from its former lawyers' malfeasance. ADCO's interest remained at 20% of returns in excess of partnership investment.

Also, if the court said that proposition was "unclear" to them, then that proposition is logically not the basis for the court's decision. Nevertheless, *In Re Yarn* applies here too, because the assignment of a patent (intellectual property) does not assign the rights against one's former attorney along with it. Therefore, Taylor could not have injured HJV by conflicting representation, because Taylor had no attorney-client relationship with HJV in developing that intellectual property. He owed HJV no duty of loyalty, and HJV could not have sued Taylor for breach of a duty he did not owe. Confirming this distinction, Rovell testified that in his opinion absent ADCO's assignment, HJV only had its own separate cause of action against Taylor for "fraud" which entitled them to receive damages for money HJV partners had invested and lost based upon Taylor's representations. Rovell testified only ADCO had the cause of action for the much larger damages.

The instant court followed, "But this is beside the point, for ADCO transferred to HJV *whatever interest* ADCO had possessed in the legal action against Mobil and Taylor." That is not precisely true, because it is undisputed ADCO retained its 20% of profits contractual interest in the litigation which had now become part of HJV's business by assignment. ADCO's assignment

came with strings attached, a remainder in the true sense. ADCO should not be required to sue Rovell derivatively through HJV for injury to a contractual right ADCO separately owned when it first retained Rovell.

The Seventh Circuit decision in the end states that "ADCO's only interest was, and is, as a partner of HJV, and its injury is derivative." (Seventh Circuit Opinion p. 4) There is nothing inconsistent with ADCO's being a partner of HJV, yet at the same time being injured by Rovell's subsequent representation of HJV in conflict with ADCO's interest. An attorney has a duty to protect its client's partnership interest, whatever it may be, if the attorney represents the partner individually, which Rovell did. That 20% was ADCO's legally protected interest, that Rovell had a duty not to injure, and that *was* injured by Rovell's guaranteed contingent settlement at HJV's, his second client's, instructions.

The Seventh Circuit stated, "The Oklahoma judiciary has concluded that whatever claim ADCO possessed was transferred to HJV. Legal ethics does not compel a lawyer to sabotage such transactions." (Seventh Circuit Opinion p. 4) [To explain this reference to the Oklahoma judiciary, in an earlier dispute between ADCO and HJV regarding whether or not ADCO's assignment to HJV was valid, Rovell had arranged to resolve the dispute between his co-clients by motion within the underlying litigation, allegedly representing HJV against ADCO by writing HJV's brief against ADCO on appeal in the process, but ADCO lost that issue. ADCO has not argued that alleged cause of action for purposes of this petition for writ of certiorari].

In response to the court's remarks above, ADCO contends the Oklahoma judiciary had finally determined

the issue between ADCO and HJV regarding who controlled the litigation. The Oklahoma court also granted that if HJV wanted, from its perspective, it could continue to retain Rovell to act in its behalf. Consequently, the Oklahoma court had determined issues between ADCO and HJV only. However, that court had not determined the issue of whether or not Rovell might have violated his duties owed to ADCO by his present or future conduct of the litigation on behalf of HJV. As a result, from ADCO's perspective, Rovell's duty to ADCO continued after the assignment, and indeed even after his representation of both co-plaintiffs in the litigation was completed.

2. When Rovell gave HJV a false affidavit for it to use to defeat ADCO's separate lawsuit against HJV and its controlling partner individually after the time frame of Rovell's representation of ADCO and HJV was over, ADCO suffered direct, not derivative, injury because the Oklahoma appellate courts relied upon Rovell's affidavit to deny ADCO's suit. The HJV partnership benefitted from the affidavit instead of being injured. Only ADCO suffered injury.

As mentioned in the factual background above, one of ADCO's original legal claims against Rovell was that he breached common law duties by offering HJV and its other partners a false affidavit which formed the basis the Oklahoma court used to dismiss the lawsuit ADCO had prosecuted against HJV and its majority partner after the Taylor litigation was over. In its brief to the Seventh Circuit Court, ADCO argued its "legally protected interest" giving it standing to sue Rovell was

ADCO's common law "expectation," arising from their former attorney-client relationship, that Rovell not provide a third party a misleading affidavit to use to defeat ADCO's separate action against the third party. None of the lower courts have ever addressed this alleged cause of action, and the Seventh Circuit did not either.

3. ADCO points out here the logical absurdities that would result if ADCO were required to bring its causes of actions against Rovell as a derivative action through the HJV partnership: (1) ADCO would have needed to argue in its derivative action that Rovell's allegedly false affidavit that enabled HJV to defeat ADCO's separate suit against it was in fact harmful to HJV even though it had served to win for HJV in its suit against ADCO; (2) if HJV were allowed to prosecute a derivative action on behalf of ADCO, it would have had to argue the inconsistent position that Rovell was ultimately liable for damages to HJV for executing the instructions its controlling partner had instructed him to execute; i.e., Rovell could defend by saying he was only following HJV's instructions.

ADCO hopes it is obvious by now that it entrusted its conflict of interest claims against Taylor to two fiduciaries, Rovell and HJV. They agreed between themselves, without ADCO's consent, to settle the litigation in a manner which guaranteed both of themselves at least a minimum recovery (Rovell 30% contingency fee of $200,000 and HJV the remainder), while the same settlement guaranteed ADCO get nothing, even though ADCO was their common beneficiary.

Rovell and his law firm had requested ADCO sign an additional written engagement agreement after ADCO's

assignment of its litigation to HJV and after the litigation had been filed on behalf of co-clients. Rovell cautioned ADCO's president that he would be personally liable for the hourly fees billed upon this agreement for the first time, and the agreement specifically stated it confirmed Rovell's firm's continued representation of ADCO in the specified litigation. The bankruptcy court opinion acknowledged the existence of that second engagement agreement as an undisputed fact.

In hindsight, considering the instant case holding that ADCO did not have any standing to sue Rovell for a continuing duty of loyalty to avoid conflicts arising from this second confirming attorney-client agreement, the agreement seems to have been a particularly sinister request; for evidently in spite of ADCO's president's personal liability for the fees, that engagement agreement was not worth the paper it was written on, allowing no direct action by ADCO.

CONCLUSION

For the foregoing reasons stated herein, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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In the

United States Court of Appeals

For the Seventh Circuit

No. 03-2575

ADCO OIL COMPANY,

Plaintiff-Appellant,

v.

MICHAEL J. ROVELL,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 03 C 341—**James B. Moran**, *Judge*.

ARGUED JANUARY 6, 2004—DECIDED FEBRUARY 3, 2004

Before EASTERBROOK, DIANE P. WOOD, and WILLIAMS, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Adco Oil Company developed a means to increase the recovery of natural gas from underground deposits and assigned this intellectual property to Hugoton Joint Venture 1986 (HJV), in exchange for a partnership interest: Adco was entitled to 20% of any returns exceeding $1.1 million. Adco hired Guy Taylor as legal counsel to negotiate on its behalf (and HJV's) to

market its idea to Mobil Oil Company. According to Adco, Taylor bungled the job and gave away the secret. HVJ and Adco filed suit in Oklahoma against both Mobil and Taylor. Adco and HJV engaged Michael J. Rovell, then a partner of Jenner & Block, to represent them. Within a month, Adco assigned to HJV whatever interest Adco held in the claims against Mobil and Taylor. HJV settled with Mobil for $250,000 and went to trial against Taylor. Before the jury returned its verdict, HJV and Taylor cut a deal, including a cap at $850,000 if the jury should make a higher award, a low of $200,000 even if the verdict favored Taylor, and a waiver of appeals and post-trial motions. The jury brought back a verdict for $120 million, so HJV received $850,000. Because total recoveries equaled $1.1 million, Adco did not receive a distribution from HJV. Adco then sued Rovell for malpractice, on the theory that he should have seen a huge verdict coming and ensured that Adco got a slice, rather than negotiating a cap that left Adco uncompensated.

Adjudication of Adco's claim against Rovell has been complicated by the fact that Rovell filed a federal bankruptcy proceeding, so the malpractice suit has proceeded as an adversary action within the bankruptcy. (Federal bankruptcy law is the source of subject-matter jurisdiction. See 28 U.S.C. §1334(b).) A further complication is that Rovell failed to give timely notice of the malpractice claim to his insurance carrier, leading to extended litigation about its duty to defend and indemnify. See *Home Insurance Co. v. Adco Oil Co.*, 154 F.3d 739 (7th Cir. 1998). After the underbrush had been cleared away, Bankruptcy Judge Ginsberg dismissed Adco's malpractice claim on the ground that, because of the assignment to HJV, Adco lacks standing to sue Rovell. District Judge Moran affirmed. 2003 U.S. Dist. LEXIS 8352 (N.D. Ill. May 15, 2003).

Unlike the bankruptcy and district judges, we conclude that Adco's claim presents a controversy under Article III. Adco wants money damages for a tort, and a favorable

judicial order would redress the injury. Its problem is not standing but substance: Adco transferred to HJV any interest in both the intellectual property and the ensuing claim against Mobil and Taylor. Adco's injury thus is derivative rather than direct—HJV did not recover enough to call for a payout to Adco. Yet Adco has elected to sue in its own name rather than to make a derivative claim on behalf of HJV, or a claim against HJV's managing partner. No rule of Oklahoma law of which we are aware permits a partner such as Adco to litigate independently on account of an injury done to a partnership. To the contrary, Oklahoma follows the lead of Delaware, which requires a partner to initiate a derivative action in order to obtain redress for an indirect injury. See 54 Okl. St. §§ 357, 358; *Litman v. Prudential-Bache Properties, Inc.*, 611 A.2d 12 (Del. Ch. 1992). Adco therefore is not entitled to recover against Rovell.

Adco's demand for an independent recovery is a thinly disguised effort to undo the assignment to which it consented during the Oklahoma litigation, and to usurp the control of the litigation ceded to HJV as a result. It is unclear to us that Adco had any interest in the suit against Mobil and Taylor to start with. Once it had sold its intellectual property rights to HJV in exchange for a partnership interest, any injury caused by Taylor's errors was suffered by HJV rather than Adco. (In other words, Adco's belief that it originally had a claim against Mobil and Taylor is attributable to the same failure to distinguish between direct and derivative injuries that besets the malpractice claim against Rovell.) But this is beside the point, for Adco transferred to HJV whatever interest Adco had possessed in the legal action against Mobil and Taylor.

Midway through the proceedings in Oklahoma, Adco changed its mind and tried to reclaim the chose in action by disputing Rovell's authority to sign off on the settlement, but the state judiciary—both the trial court and the court

of appeals—held that the assignment is valid and extinguishes Adco's independent claim. That decision is not subject to collateral attack in this federal litigation, and Adco's insistence that as a matter of Oklahoma law it must have retained *some* stake in the claim against Mobil and Taylor is a form of prohibited collateral attack. So too is Adco's insistence that, because Rovell represented Adco before he took HJV itself as a client, Rovell owed it a duty to use this phantom claim to siphon some settlement proceeds direct to Adco, without passing through HJV. The Oklahoma judiciary has concluded that whatever claim Adco possessed was transferred to HJV. Legal ethics does not compel a lawyer to sabotage such transactions.

HJV itself may or may not have had a legitimate grievance with Rovell's advice and assistance. We do not explore that question. Adco's only interest was, and is, as a partner of HJV, and its injury is derivative. Only HJV could vindicate the interest of the partnership as a whole, and the time to do so expired years ago. Adco should not attempt to resurrect this claim by re-filing it as a derivative action; that would just invite sanctions for frivolous litigation.

AFFIRMED.

App. 5

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT - WITH ORAL ARGUMENT

Date: February 3, 2004

BEFORE: Honorable FRANK H. EASTERBROOK, Circuit Judge

Honorable DIANE P. WOOD, Circuit Judge

Honorable ANN CLAIRE WILLIAMS, Circuit Judge

No. 03-2575

IN RE:
MICHAEL J. ROVELL
Debtor - Appellee

APPEAL OF: ADCO OIL COMPANY

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
No. 03 C 341, James B. Moran, Judge

The judgment of the District Court if AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

(1061-110393)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ADCO OIL COMPANY	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 03 C 341
	)	
MICHAEL J. ROVELL,	)	
	)	
Appellee.	)	

MEMORANDUM OPINION AND ORDER

On October 21, 1994, clamant-appellant Adco Oil Company (Adco) brought suit in the United States District Court, Western District of Oklahoma, against Debtor-appellee Michael J. Rovell (Rovell), alleging legal malpractice due to conflict of interest that arose when Rovell represented Adco and a co-plaintiff. When Rovell sought bankruptcy relief the litigation was removed to the United States Bankruptcy Court, Norther District of Illinois, Eastern Division. On December 11, 1002, the Honorable Rovert E. Ginsberg entered the final order granting summary judgment in favor of appellee Rovell because appellant did not have standing to bring the malpractice claim. For the following reasons, the order of the bankruptcy court is affirmed.

BACKGROUND

In 1986, Adco discovered a method for despacing and respacing Oklahoma gas fields, which could have been worth as much as hundreds of millions of dollars. It hired attorney Guy Taylor to assist in the initial development of the project, which involved leases overlying land owned by Mobil Oil Company (Mobil). Adco entered into a general partnership pursuant to Oklahoma law; the Hugoton Joint Venture-1986 (HJV). The majority partner and largest financial contributor to HJV was Judson Stone. Pursuant to the partnership agreement Adco contributed no capital, only its method, but was entitled to 20% of the profits after the initial return on the investment (approximately $1.1 million). Taylor's improper disclosure of confidential information to Mobil resulted in the failure of the joint venture.

On February 24, 1988, Adco hired defendant-appellee Rovell on an hourly basis to determine whether it had a malpractice clam against Taylor. While Rovell was initially retained by Adco, he talked to other members of HJV, including Stone, while investigating the possible lawsuit. On March 16, 1988, unbeknownst to Rovell, Adco sent a letter to HJV agreeing to assign all rights in the potential lawsuit against Taylor to HJV and allowing Stone to control the litigation in exchange for continuing to receive 20% of all HJV profits.

On June 10, 1988, Rovell filed a state court claim in Oklahoma alleging fraud and malpractice against Taylor on behalf of Adco and HJV, subsequently adding Mobil as a defendant. Jenner & Block, Rovell's law firm, requested further engagement letters from both Adco and HJV, as parties to the lawsuit.

In 1989, Stone, on behalf of Adco and HJV told Rovell that the plaintiffs could no longer afford to pay him to represent them. Rovell agreed with Stone to keep his name

as counsel of record so as to avoid demonstrating financial weakness to Mobil.

In March 1992, through other counsel, HJV reached a settlement agreement with Mobil in the amount of $250,000, which would require HJV to return the leases to Mobil. Stone then asked Rovell, now with a new law firm, to rejoin the litigation on a contingency basis, and Rovell agreed. Stone also advised Rovell of Adco's March 16, 1988, letter assigning claims to HJV.

After a status conference on March 25, 1992, Stone asked Rovell to drop Mobil as a defendant as a result of the settlement agreement. Rovell did so, dropping Mobil with respect to both Adco and HJV. Adco then formally terminated Rovell's services and his authority to act on its behalf and filed a motion asking the court to strike Adco as a party to the dismissal order and further "requesting Rovell be required to prove his authority to act on behalf of the plaintiffs, Adco and HJV," as is allowed under Oklahoma law. After a hearing, at which Rovell testified, the court found that the assignment of the claims was valid and that Stone, on behalf of HJV, had the right to control the litigation. Adco appealed but the order was affirmed because the appellate court determined that the assignment was valid and that Adco therefore lacked standing to complain about decisions relating to the litigation.

Rovell then tried the case against Taylor on behalf of HJV, as the owner of Adco's claims. Before the trial he reached a high-low settlement pursuant to with the plaintiffs would receive no less than $200,000 and no more than $850,000, regardless of the jury verdict. A jury subsequently returned a verdict of $120 million- $100 million in compensatory damages and $20 million in punitive damages. Because the actual recovery did not provide a return on the initial investment, Adco received nothing from the settlement.

DISCUSSION

This court has jurisdiction over this appeal pursuant to 28 U.S.C. § 158(a)(1). Acting as an appellate court in bankruptcy proceedings, we accept the bankruptcy court's finding's of fact unless clearly erroneous but review issues of law *de novo*. Matter of UNR Industries, Inc., 986 F.2d. 207, 208 (7th Cir. 1993). The sole question presented on appeal is whether appellant had standing to bring the malpractice claim against appellee.

A bankruptcy court, like any other federal court, lacks constitutional power to rule absent an actual controversy where litigants have something at stake. Matter of Fedpak Systems, Inc., 80 F.3d 207, 211 (7th Cir. 1996). Standing consists of three components:

> First, the plaintiff must have suffered an injury in fact- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. . . . Third, it must be likely . . . that the injury will be redressed by a favorable decision.

Id. At 212, *quoting* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

Appellant's complaint consists of five allegations against appellee. First, it claims that Rovell committed malpractice in failing to serve all of Taylor's partners. Second, Adco alleges that Rovell represented HJV when filing the motion to dismiss Mobil, despite the fact that this representation was adverse to Adco's interest. Third, Adco claims that Rovell testified at the hearing on the dismissal order, against adversely to Adco's interest. Fourth, appellant claims that Rovell improperly entered into the settlement on behalf of both HJV and Adco. Finally, Adco alleges that Rovell failed to deliver the proceeds from the settlement to Adco.

It is undisputed that Adco and Rovell created an attorney-client relationship on February 24, 1988. This relationship saddled Rovell with the responsibility to avoid actual and potential conflicts of interest. Appellant is correct in asserting that this is a personal duty, owed to Adco as the client rather than to the litigation. Moreover, there is no limit as to the duration of this duty. Appellant spends much of its briefs detailing the duty owed by Rovell and how his subsequent involvement in the Taylor litigation on behalf of HJV breached this duty.

The issue before us, however, is whether appellant has standing to bring a tort claim against Rovell, not whether he breached a fiduciary duty owed Adco. Even assuming that Rovell did so, Adco does not adequately allege any injury related to Rovell's alleged misconduct. Appellant's allegations all involve events in the litigation against Taylor which occurred after the assignment letter.[1] In reviewing the legal issues of the case, we are not in a position to question the validity of the assignment. Treating the assignment as valid, Adco cannot claim any injury that could be remedied by a favorable decision against Rovell. While it was certainly possible that a breach of duty by Rovell as Adco's attorney could have caused an injury to appellant, it could not have done so within the context of the Taylor litigation in which Adco had no protected interest.

HJV was free to hire Rovell as its attorney, and free to accept settlement offers from Mobil and then from Taylor. In Fact, HJV could have immediately dropped the lawsuits against Taylor and Mobil, leaving Adco without a potential

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[1] We not that Adco would have a concrete injury if Rovell had represented both parties while negotiating the assignment of the litigation interests. As it is, Rovell did not know about the assignment until four years after the letter from Adco to HJV.

remedy against either defendant. Adco realized this and accepted the risk when assigning its rights to HJV.

CONCLUSION

For the foregoing reasons, the bankruptcy court's order granting summary judgment in favor of appellee-debtor is affirmed.

JAMES B. MORAN
Senior Judge, U.S. District Court

May 15, 2003

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Adco Oil Company	)	
	)	
v.	)	Case Number: 03 C 341
	)	
Michael J. Rovell	)	

JUDGMENT IN A CIVIL CASE

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury rendered its verdict.

☐ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that the bankruptcy court's order granting summary judgment in favor of appellee-debtor is affirmed.

Date 5/15/2003

Michael W. Dobbins, Clerk of Court

/s/ Willie A. Haynes, Deputy Clerk

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Bankruptcy No. 95 B 21171
	)	
MICHAEL J. ROVELL,	)	Honorable Robert E. Ginsberg
	)	
Debtor.	)	Chapter 11

MEMORANDUM OPINION AND ORDER

This matter comes before this Court on plaintiff's, Adco Oil Company's ("Adco"), and debtor's, Michael J. Rovell's, cross-motions for summary judgment. For the reasons set forth below, this Court denies plaintiff's motion and grants the debtor's motion.

FINDINGS OF FACT

In 1988, Adco had a 20% ownership interest in the Hugoton Joint Venture ("HJV") oil and gas partnership. Adco's Statement of Undisputed Facts, ¶ 1. Adco discovered a method for despacing and respacing gas fields, which could generate hundreds of millions of dollars of profits. Adco's Undisputed Statement of Facts, Ex. 29. Alvin Simmons served as Adco's president. Adco's Statement of Undisputed Facts, ¶ 1. Judson Stone acted as HJV's majority partner. Adco's Statement of Undisputed Facts, ¶ 5. An agreement between Adco and HJV gave Stone voting control of partnership decisions, and entitled Adco to 20% of residuals after first return of partnership investment, which was approximately $1 million. Adco's Statement of Undisputed Facts, ¶ 5. However, due to Adco attorney Guy Taylor's unauthorized revelation of confidential information

to Mobil Oil Company ("Mobil"), the project failed. Adco's Statement of Undisputed Facts, Ex. 29.

On July 15, 1988, Adco and HJV retained the law firm Jenner & Block to represent them on an hourly basis in an action against Taylor, his law firm, and Mobil ("the Taylor litigation"). Debtor's 402.M Statement, ¶ 2; Adco's Statement of Undisputed Facts, Ex. 3. An engagement latter confirmed the representation, stating: "This letter will confirm [Adco's and HJV's] engagement of Jenner & Block. . .in connection with [the Taylor litigation][2]." Adco's Statement of Undisputed Facts, Ex. 6. Rovell, as a Jenner & Block attorney, did extensive work on the case.

In 1989, Stone concluded that the plaintiffs could no longer afford Jenner & Block's hourly rates. Debtor's 402M Statement, ¶ 3. However, Stone also thought that Rovell's withdrawal would appear as a sign of weakness to the defendants. Debtor's 402M Statement, ¶ 3; A Adco's Statement of Undisputed Facts, ¶ 3; Adco Exhibit 7(M), ¶ 3. Thus, Stone asked Rovell to remain as counsel of record but to discontinue all services. Debtor's 402M Statement, ¶ 3. Rovell agreed. Debtor's 402M Statement, ¶ 3.

In 1992, Stone reached a settlement with Mobil. Debtor's 402M Statement, ¶ 5. Stone then asked Rovell, who had

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[2] On February 24, 1988, Jenner & Block had sent Stone an engagement letter, which he signed. However, Jenner & Block concluded that the February engagement letter did not sufficiently explain that both Adco and Stone were responsible for the fee. Thus, Jenner & Block sent the July 15, 1988 engagement letter, which specifically identified Adco and HJV as its client. In a letter to Simmons and Stone that accompanied the July 15, 1988 engagement letter, Rovell wrote, "For our records, we need a new engagement letter as the entity has changed its corporate form." Adco's Statement of Undisputed Facts, Ex. 6. This Court treats the July 15, 1988 engagement letter as marking the beginning of Jenner & Block's relationship with Adco and HJV.

since left Jenner & Block, to consider becoming involved with the Taylor litigation again on a contingency fee basis. Debtor's 402M Statement, ¶ 5. Stone also advised Rovell of *a dispute surrounding a letter from Adco to HJV, dated* March 16, 1988. Debtor's 402M Statement, ¶ 6. Stone contended that the letter assigned all of Adco's interest in the Taylor litigation to HJV.Debtor's 402M Statement, ¶ 6. Rovell reviewed the letter, concluded that Stone had the authority to retain him, and agreed to represent HJV on a contingency fee basis. Debtor's 402M Statement, ¶¶ 5-7.

Soon thereafter, Rovell brought a motion on behalf of Adco and HJV to dismiss Mobil pursuant to the settlement negotiated by Stone. Debtor's 402M Statement, ¶ 8. Adco filed its motion to strike itself as a party to the Mobil dismissal and to require Rovell prove his authority to act on its behalf. Debtor's 402M Statement, ¶ 9.

In July 1992, the Oklahoma County District Court held a hearing on Adco's motions. At the hearing, HJV called Rovell to testify as the the validity of the assignment. Debtor's 402M Statement, ¶¶ 10-15. The trial court sustained the motion to dismiss Mobil, found that Adco has assigned the litigation to HJV, and stated that, apart from the assignment, Adco was estopped from complaining about the assignment because HJV funded the litigation. Debtor's 402M Statement, ¶¶ 10-15; Adco's Statement of Undisputed Fact, Ex. 7. Moreover, the court notied that Adco had no right to separate counsel in the Taylor litigation, as Rovell represented the only party with an interest in the matter. Adco Statement of Undisputed Facts, Ex. 7.

The Oklahoma Court of Appeals affirmed the trial court's ruling, saying, among other things, that Adco lacked standing to complain about whomever HJV selects to represent it int eh Taylor litigation because it validly assigned its interest to HJV; "Because we agree with the

trial court that the assignment of the cause of action was valid, Adco lacks standing to complain about whomever HJV selects to represent it in the lawsuit." Adco's Statement of Undisputed Facts, Ex. 14, at 6; Debtor's 402M Statement, ¶ 16. Furthermore, the appellate court said that Rovell acted as a witness at the assignment hearing, not as an attorney for either party, an allegation that Adco included in the appeal. Adco's Statement of Undisputed Facts, Ex. 14, at 6; Debtor's 402M Statement, ¶ 16.

Thereafter, during the mediation sessions in October 1992, it became apparent to Rovell and Adco's representatives that any recovery in the Taylor litigation would be based on an extremely speculative theory of damages. Debtor's 402M Statement, ¶¶ 18-27. The mediator suggested that the plaintiffs settle for $200,000. Debtor's 402M Statement, ¶ 28. Eventually, Rovell negotiated a high/low settlement on behalf of the plaintiffs, whereby the case would proceed to trial and verdict. The plaintiffs would receive between $200,000 and $850,000, depending on the verdict. Debtor's 402M Statement, ¶ 31. If the jury returned a verdict for the defendants or for the plaintiffs of less than $200,000, the plaintiffs would receive $200,000. Debtor's 402M Statement, ¶ 31. On the other hand, if the jury returned a verdict for the plaintiffs of greater than $850,000, the plaintiffs would receive $850,000. Debtor's 402M Statement, ¶ 31. If the verdict fell between $200,000 and $850,000, the defendants would pay the exact amount of the verdict. Debtor's 402M Statement, ¶ 31.

Prior to trial, Rovell filed a second Amended Petition, adding two of the Taylor law firm's partners as defendants. Adco's Statement of Undisputed Facts, ¶ 41. A summons directed the new defendants to respond within 20 days of service. Adco's Statement of Undisputed Facts, ¶ 42. However, prior to the day the new defendants were required to answer, the jury returned its verdict. Adco's Statement of Undisputed Facts, ¶¶ 42-43. Rovell argues

cogently that for settlement purposes, the new defendants did not need to answer because they were covered by the same insurance policy as Taylor. Debtor's Response to Adco's Statement of Undisputed Facts, ¶¶ 42-43. Thus, recovery was limited to the amount of their insurance regardless of their answer. Debtor's Response to Adco's Statement of Undisputed Facts, ¶¶ 42-43.

On October 26, 1992, the jury returned a $120 million verdict for the plaintiffs. Debtor's 402M Statement, ¶ 39. According to the settlement agreement, the plaintiffs received $850,000. Debtor's 402M Statement, ¶ 40. Rovell's contingency fee agreement called for him to receive $255,000 plus $10,000 in expenses, leaving $585,000 for distribution to those entitled to it. Debtor's 402M Statement, ¶ 41. All of that money went to the HJV venturers, leaving nothing for Adco.

Adco sued Stone and HJV for breach of fiduciary duties and breach of contract in connection with the Taylor litigation ("the Stone litigation"). Debtor's 402M Statement, ¶ 43. However, the court granted Stone's and HJV's motions for summary judgment, noting that the settlement proceeds were distributed according to the terms of the joint venture agreement, and that HJV did not breach any duty to Adco by entering into the high/low settlement agreement. Debtor's 402M Statement, ¶ 43. The Court of Civil appeals affirmed the summary judgment ruling on Debtor's 402M Statement, ¶ 43.

In the instant proceeding, Adco brings five claims against Rovell. First, Adco argues that Rovell failed to provide competent representation by not serving Taylor's partners before the trial, thereby denying Adco the possibility of recovering damages from them after the verdict. Second, Adco states that Rovell represented HJV when such representation was adverse to Adco by filing the motion to dismiss Mobil. Third, Adco claims that Rovell breached a

duty to Adco by testifying at the hearing on the motion to dismiss Mobil. Fourth, Adco says that Rovell breached a duty of competent representation to Adco be entering into the settlement on behalf of Adco and HJV, and by falsely telling HJV that Adco consented to the settlement. Fifth, Adco complains that Rovell breached a fiduciary duty to Adco by failing to deliver a portion of the settlement proceeds to Adco.

Rovell responds by arguing that the Oklahoma Appellate Court decision that Adco assigned its claims to HJV precluded Adco from making these claims. More specifically, Rovell states that the state court's decision that Adco assigned its claims to HJV operates as res judicate and collateral estoppel in the present proceeding. Additionally, Rovel argues that HJV "owns" any claim against him for malpractice in the Taylor litigation, yet HJV has declined to bring any such action. Additional Facts That Require Denial of Summary Judgment for Adco, ¶¶ 1-3.

Adco and Rovell have submitted cross motions for summary judgment.

DISCUSSION

Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(C); Celotex Corp. v Catrett, 477 U.S. 317, 322 (1986); Hilt-Dyson v. City of Chicago, 282 F.3d 456, 462 (7th Cir. 2002). At the summary judgment stage, the judge's function is not to weigh the evidence and determine the truth of the matter but to determine if there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986); Waukesha Foundry, Inc. v. Industrial Eng'g, Inc., 91 F.3d 1002, 1007 (7th Cir. 2000). A plaintiff seeking summary judgment must make a prima facie showing as to each

essential element of its claim. United Missouri Bank of Kansas City,N.A. v. Gagel, 815 F.Supp. 387, 391 (D. Kan. 1993); Orozco v. County of Yolo, 814 F. Supp. 885, 890 (E.D. Cal. 1993). Additionally, a court must view all reasonable inferences in the light most favorable to the party opposing the motion. Goetzke v. Ferro Corp., 280 F.3d 766, 774 (7th Cir. 2002)

The Unites States Constitution confines federal courts to adjudicating actual "cases" and "controversies." Allen v. Wright, 468 U.S. 737, 750 (1984). The case and controversy doctrines set out fundamental limits on federal judicial power. Id. Perhaps the most important of these doctrines is that a litigant have standing to invoke the power of a federal court. Id. Standing is both a constitutional limitation on federal-court jurisdiction, and a prudential limitation on its exercise. In the Matter of Fedpak Systems, Inc., 80 F.3d 207, 212 (7th Cir. 1996) (citations omitted). In essence, the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. Allen, 468 U.S. at 750 (citations omitted).

A bankruptcy court has a unique position with respect to Article III of the Constitution and the case and controversy limitations imposes upon district courts. Title 28, section 151 of the United States Code limits a bankruptcy judge's exercise of adjudicatory authority to that of the district court.[3] Accordingly, this Court is constrained by the

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[3] Title 28, section 151 of the United States Code provides:

> In each judicial district, the bankruptcy judges in regular service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under his

(continued...)

traditional case and controversy limitations, including standing. See Fedpak Systems, Inc, 80 F.3d at 212 (stating, "A bankruptcy count, like any other federal court, lacks the constitutional power to render advisory opinions or to decide 'abstract, academic, or hypothetical questions") (citation omitted).

In the present case, Adco lacks standing to bring its claims for a number of reasons. First, Rovell did not owe a separate duty to Adco at the time he agreed to represent HJV. Essentially, Adco argues that it had an attorney-client relationship with Rovell prior to the assignment and under Novell's obligation to protect its 20% payout interest in any recovery after the assignment. Therefore, Adco asserts that Rovell breached his fiduciary duty to Adco in agreeing to represent HJV on a contingency basis and in negotiating a settlement that left Adco with no recovery. While the existence of a separate attorney-client relationship between Adco and Rovell might provide Adco standing to bring these claims, that relationship did not exist at the time Rovell agreed to represent HJV on a contingency basis. Adco points to the July 15, 1988 engagement letter as proof that Rovell owed a duty to Adco. However, Adco assigned its interest in the Taylor litigation to HJV on March 16, 1988. Therefore, Jenner & Block actually represented HJV in the Taylor litigation because only HJV had an interest in the matter. Obviously, the language of the engagement letter cannot override the effect of the assignment.

Moreover, this Court need not consider Rovell's confusing "effective withdrawal" in 1989 because Adco assigned its

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[3] (...continued)
chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

interest in the Taylor litigation to HJV in 1988. Thus, to the extent that Rovell represented either Adco and HJV after the assignment in 1988 and before the contingency agreement with HJV in 1992, Rovell could have only represented HJV because Adco did not have an interest in the Taylor litigation.

Second, Adco assigned all of its interest in the Taylor litigation to HJV. Rovell did not owe Adco a duty when he negotiated the Taylor litigation settlement. HJV controlled the litigation and Rovell represented HJV. As the Oklahoma Court of Appeals held, in assigning its interest to HJV, Adco lost the ability to complain about whomever HJV selected to represent it. This Court need not revisit that issue and may well be collaterally estopped from reevaluating the assignment at this time because the Oklahoma Court of Appeals already considered it. See Anco Mfg. & Supply Co., Inc. V. A.R. Swank, 524 P.2d 7, 12 (Okla. 1974) (stating further, "although identity of causes of action is not a necessary element in a plea of collateral estoppel, it is necessary that the point on which th plea of estoppel by the former judgment is based be an issue in the later case, and have been in issue and decided in the former") (citation omitted).

Third, to the extent that Adco is HJV's limited partner, the Uniform Partnership Act, as adopted in Oklahoma, prohibits it from bringing an action on behalf HJV unless Adco is enforcing its rights against or liability to HJV.[4] Indeed, courts have stated that the act treats a limited partner as a corporate shareholder, liable only to the extent of his or her capital contribution but without the ability to

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[4] Okla. State. tit. 54, § 167 provides: "A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's rights against or liability to the partnership."

sue on behalf of the partnership. Sixth Geostratic Energy Drilling Program 1980 v. Ancor Exploration Co., 544 F.Supp. 297, 303 (N.D. Okla. 1982). Thus, a limited partner may neither join litigation on behalf of partnership interest, represent partnership interests in litigation, nor represent his or her own interest in the partnership's interest. Wroblewski v. Brucher, 550 F.Supp. 742, 748 (W.D. Okla. 1982). Instead, a limited partner may only represent himself against the partner. Id.; see also Northern Trust Co. v. VIII South Michigan Associates, 276 N.E. 29 1095, 1101 (Ill. App. Ct. 1995) (comparing limited partners to shareholders and noting that limited partners do not have cause of action for damages to their interest in limited partnership). In the present case, Adco claims that the debtor represented Adco's 20% interest in any recovery from the Taylor litigation because "an attorney. . .may expressly or impliedly undertake simultaneous representation of the partnership and a partner." Adco's Response to Debtor's Motion for Summary Judgment, at 4. However, to the extent that Adco is a limited partner, Oklahoma law clearly precludes it from bringing this claim.

CONCLUSION

For the reasons stated above, this Court denies Adco's motion for summary judgment and grants Rovell's motion for summary judgment. The debtor's objection to claim no. 24 filed by Adco Oil Company is sustained and the claim is disallowed.

Dated: December 11, 2002

ENTERED:

_____

Robert E. Ginsberg
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	) Chapter 11
	)
MICHAEL J. ROVELL,	) Bankruptcy
	) No. 95 B 21171
	)
Debtor.	) Hon. Robert E. Ginsberg

ORDER

AT CHICAGO, ILLINOIS, IN THE DISTRICT ON THE 11TH DAY OF DECEMBER, 2002.

For the reasons set forth in the MEMORANDUM, OPINION AND ORDER dated December 11, 2002 the motion for partial summary judgment by claimant Adco Oil Company is denied. The debtor's cross motion for summary judgment in his favor and against Adco Oil Company on its claim no. 24 is granted. The debtor's objection to claim no. 24 filed by Adco Oil Company is sustained and the claim is disallowed.

/s/ ROBERT E. GINSBERG
BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Michael W. Dobbins
CLERK

Office of the Clerk

Mark J. Rose
Attorney at Law
200 West Adams
Suite 2850
Chicago, IL 60606

Case Number: 1:03-cv-00341

Other Court No: 95-B-21171

Title: Adco Oil Co v. Rovell

ASSIGNED Judge: Honorable James B. Moran

MINUTE ORDER of 5/15/03 by Hon. James B. Moran : The bankruptcy court's order granting summary judgment in favor of appellee-debtor is affirmed. Entered Memorandum Opinion and Order, terminating case. Mailed notice

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

February 26, 2004

Before
Hon. Frank H. Easterbrook, Circuit Judge
Hon. Diane P. Wood, Circuit Judge
Hon. Ann Claire Williams, Circuit Judge

No. 03-2575

ADCO OIL COMPANY *Plaintiff-Appellant,*	) Appeal from the United) States District Court) for the Northern
v.	) District of Illinois,) Eastern Division
MICHAEL J. ROVELL, *Defendant-Appellee.*	) No. 03 341) James B. Moran, *Judge*

ORDER

Plaintiff-appellant filed a petition for rehearing on February 17, 2004. All of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.